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TOWN ATTORNEY REPORT

DATE: February 14, 2002

FROM: Monroe D. Kiar

RE: Litigation Update



1. **Sunrise Water Acquisition Negotiations:** The Town requested competitive proposals for providing engineering services to conduct a western area utilities study. The Bid Selection Committee met on September 12, 2001 and ranked URS as its first choice. At the Town Council Meeting of October 3, 2001, a resolution was approved selecting URS to provide engineering services for the western area utilities study and authorizing the Town Administrator to negotiate an agreement with URS for such services. The Administration advises that its negotiations as to the terms of an agreement with URS are ongoing and that there are still some terms to be worked out.
2. **Ordonez, et al v. Town of Davie:** The Town Attorney's Office has spoken with Mr. Burke relevant to this case. As indicated in earlier reports to the Town Council, this matter went to trial and the jury returned a zero verdict for the plaintiffs. Having failed to file a timely Notice of Appeal, the jury verdict became final. Mr. Burke has filed a Motion to Tax Costs and Attorney's Fees against the plaintiffs, but as he indicated, the Motion continues to remain pending and the Judge has not yet ruled upon it.
3. **Seventy-Five East, Inc. and Griffin-Orange North, Inc. v. Town of Davie:** Our outside legal counsel, Mr. Burke, indicates that Judge Cocalis has reached a decision regarding these two consolidated cases. It is our understanding that the Judge has granted the Plaintiff's Writ of Certiorari and has asked Attorney Spencer, the attorney for the Plaintiff, to prepare a proposed Order for the Judge's signature. As soon as Mr. Burke receives a copy of the Order, he will transmit it to the Town Attorney's Office along with his evaluation and recommendation as to a possible appeal of the Judge's Order.
4. **MVP Properties, Inc.:** The United States District Judge granted the Town of Davie's Motion for Summary Judgment and entered a Final Summary Judgment in favor of the

Town and against the Plaintiff, MVP Properties, Inc. MVP Properties, Inc. filed a Notice of Appeal and both sides have filed their Appellate Briefs. Mediation was ordered by the 11th Circuit Court of Appeals which was held on November 1, 2001, but a settlement of this dispute was not reached. Mr. Burke offered to waive the outstanding Cost Judgment if the Plaintiff Corporation would agree to withdraw its appeal. MVP Properties, Inc. rejected this proposal and it was unwilling to make a counter-proposal unless the Town of Davie expressed a willingness to pay the Plaintiff Corporation some amount of money. The mediation ended with an impasse. Oral argument on the Appeal filed by MVP Properties, Inc. was heard on February 1, 2002, at the Federal Courthouse in Miami, Florida. Mr. Burke is waiting for the Court's ruling on the Appeal. It is expected within 30 to 90 days.

5. **Town of Davie v. Malka:** The Building Department has previously confirmed that the exterior of the home is complete. The exterior was painted, all construction debris was removed and the roof completed. The completion of the exterior had been the principal goal of the Town Council, the Code Enforcement Division, the Town Attorney's Office, the Building Department and the residents in the community. The Town Attorney's Office has been advised by the Building Department that the owner has commenced completion of the interior of the structure now that the exterior has been completed, and he is currently working on the underground wiring.
6. **City of Pompano Beach, et al v. Florida Department of Agriculture and Consumer Services:** The last rule promulgated by the Department of Agriculture was successfully challenged by Broward County and the coalition of cities before the Department of Administrative Hearings. The Department of Agriculture is appealing that ruling. In the meantime, the Department of Agriculture has promulgated a new rule and the coalition of cities, including Davie, has filed a rule challenge to this new rule. The trial on this challenge was initially scheduled to be heard in Pompano Beach in the latter part of January, 2002. The coalition commenced discovery procedures, but the Department has failed to properly produce all requested discovery and has filed a Motion seeking a Protective Order relieving it of its requirement to produce the Department's documents and discovery needed by the coalition. Accordingly, the trial has been rescheduled until April, 2002. The Department of Agriculture has filed another Motion to Disqualify the DOAH Judge again alleging bias. The first Motion to Disqualify was denied and it is anticipated that the second filed by the Department will also be denied. Recently, a Bill was filed with the State Legislature by supporters of the Department of Agriculture and apparently, the citrus industry, to extend the powers of the Florida Department of Agriculture and Consumer Services relevant to the Citrus Canker matter. This Bill would allow the Department far greater powers and far reaching powers than currently exist. Additionally, Judge Fleet entered an Order in the Circuit Court case relevant to the inverse condemnation proceeding, to stay that case for a period of 30 days until after the First District Court of Appeal's ruling on Judge Van Laningham's decision on the original rule challenge.
7. **Christina MacKenzie Maranon v. Town of Davie:** The Town of Davie has filed a

Motion for Summary Final Judgment on behalf of the Town of Davie and Police Officer Quentin Taylor seeking to dismiss both parties as defendants in this lawsuit. The Motion for Summary Judgment continues to remain pending. In the meantime, the Court has removed the case from the trial docket pending its ruling on our Motion for Summary Judgment. The Town Attorney's Office has been in contact with the outside attorney assigned by the Florida League of Cities in this case, who has advised that he will now be filing a Motion to Dismiss the lawsuit for lack of prosecution, as the Plaintiff has failed to take any action in this matter for many months.

8. **Reinfeld v. Town of Davie, et al:** The parties have commenced discovery and the deposition of the Plaintiff was recently taken. Based upon the contents of that deposition, Mr. Burke, the League of Cities Attorney assigned to this case, has indicated to the Town Attorney's Office that the Town will be moving for the entry of a Summary Judgment in its favor and against the Plaintiff, Reinfeld. In the meantime, Mr. Marrero, the Florida League of Cities Attorney assigned to represent Defendant Weiner, has indicated that it is his expectation that his office will be moving for Summary Judgment on behalf of Mr. Weiner as well in the near future and he has expressed confidence that his Motion will be granted by the Court. Mr. Weiner additionally filed his Answers to the various Interrogatories served upon him by the Plaintiff. A copy of Mr. Weiner's Answers were previously forwarded to the Council for its information. Additional depositions have been conducted by the parties since the last Litigation Report, and additional depositions are scheduled to be taken in the future. Further, a mediation conference has been scheduled in this matter by Order of the Court for March 7, 2002. It is anticipated that Mr. Burke along with a member of the Town Attorney's Office and a member of staff will attend the mediation conference.
9. **Spur Road Property:** The Town Attorney has been in contact with Mr. Burke regarding this matter. Mr. Burke appeared in Tallahassee before the Division of Administrative Hearings arguing the Town's protest of the Department of Transportation's award of the property to the highest bidder. Mr. Burke advises that the Judge for the Division of Administrative Hearings has in fact ruled against the Town of Davie's protest and has recommended to the Department of Transportation that they accept the bid of the highest bidder. Mr. Burke has indicated that the Town, if it wishes, can file an appeal to the District Court of Appeal and has indicated that he will provide the Administration directly with his evaluation and recommendations.
10. **Victoria Saldena v. Town of Davie:** Ms. Saldena is suing the Town of Davie and another defendant relevant to an automobile accident. Mr. Johnson, the attorney assigned to represent the Town by the League of Cities, has assured the Town Attorney's Office that there should be no exposure to the Town which would exceed its insurance coverage and that the maximum exposure to the Town is its deductible. The Court recently issued an Order setting this matter for jury trial during the 5 week jury trial calendar commencing Tuesday, September 3, 2002. The Judge assigned to this case is Judge Charles M. Greene, a well respected Judge of the 17th Judicial Circuit of Broward County.

11. Cummings v. Town of Davie: The Stipulated Final Judgment jointly prepared by the Town Attorney's Office and the attorney for the Plaintiffs was submitted to the Court and signed by Judge Streitfeld on January 17, 2002. Pursuant to the terms of the Stipulation, the sums set forth in paragraphs 1 through 3 which total \$50,500.00, were paid to the Plaintiff within the thirty (30) days of the entry of the Court's Order as required. Simultaneously with payment of the \$50,500.00, the original Quit Claim Deed executed by Mr. and Mrs. Cummings was presented to the Town Attorney's Office. The Town Attorney's Office in turn, sent the original Quit Claim Deed to the Administration for recording and proper handling. Once the Quit Claim Deed has been recorded, it has been requested that a copy be sent to the Town Attorney's Office so that it in turn, may transmit a copy to the attorney for Mr. and Mrs. Cummings. The Town now owns the land upon which our sidewalk was built several years ago.
12. Proposed Sidewalk in Front of Foster Home: As the Town Attorney's Office has previously advised the Town Council, the Fosters have authorized their attorney to relay to the Town a proposal for settling the sidewalk issue. The Fosters contend that the sidewalk is constructed on a portion of their property. The Town of course, disputes this. Nevertheless, the Fosters have indicated that in an effort to resolve the matter, they are willing to donate a permanent easement to the Town of Davie for the purpose of constructing a sidewalk. The Fosters are insisting that the Town of Davie pay all costs related to the conveyance of the permanent easement, including, but not limited to, preparation of the conveyance documents, that they be permitted to retain an engineering expert to review Davie's proposed construction plans of the sidewalk, and that the Town would pay the reasonable costs of the engineer hired by the Fosters, that the legal descriptions of the areas to be conveyed to the Town be prepared by McLaughlin Engineering at no cost to the Fosters, and that Davie will pay the Fosters' attorney's fees relating to this matter, and that in the event that donation of permanent easement to Davie results in the necessity for either the Fosters or subsequent purchasers of the property to seek a variance from the Town of Davie, then there shall not be any administrative costs or filing fee for the variance process to the Fosters or a subsequent purchaser. The Town Attorney's Office has determined that the attorney's fees incurred to date by the Fosters are approximately \$1,500.00. At the request of the Director of the Public Works Department, the Town Attorney's Office has provided the Fosters' attorneys with the names of three engineering firms used by the Town and asking if one of these would be agreeable to perform the engineering services requested. The Town Attorney's Office has spoken with the attorney for Mr. and Mrs. Foster and it is their desire to use Engineer Arnold Ramos and not one of the three engineering firms referenced in my prior letter. It is recommended that the Town give serious consideration to their request that Mr. Ramos be used for engineering services in this instance, as opposed to the three engineering firms currently providing the Town with engineering service in order for this matter to be concluded at a minimal expense and cost to the Town of Davie. The intention to reach an amicable settlement with the Fosters by the Town Attorney's Office is to prevent a lawsuit similar to that which resulted in the Cummings v. Town of Davie case which was initiated under a prior administration and prior Town Attorney.